CrA. 993/95

(2)

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 17 Name सोमारू

Father's Name खुदर Residence ग्राम - जानकीरास
थाना - जगदलपुर बस्तर

Age 25 Sentenced to आजीवन कारावास on

2.5.94 under Section 302 I.P.C. by अति. सत्र न्याय. जगदलपुर

S.T.No. 572/93

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with the seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proct-itioner who should appear.

1. Date of application for copy of Judgement : No.

2. Date of which copy received :- 27.12.94

3. Date on which Appelisent :- 30.12.94

4. Whether the prisoner wished to be represented or not Yes/No.

No. 17 Name सोमारू S/o खुदर

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 711 Ectagen./94 Dated 30.12.94

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent Central/Distt./
Sub Jail.

Date of receipt in C.J.M's Office. 2.1.95

Date of receipt of record of accompany. -

Memo of Appeal of the Appelliate Court. -

No. 47 Dated 18.1.95

Forwarded to the H'ble Dist. and sessions Judge Jagdalpur

C.J. Magistrate

Date of receipt of Appelliate Court.

2.1.95 To 30/12

XI-HC-22

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# आदेश पत्रक

मामला क्रमांक Cr.App. 993/95 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**DIVISION BENCH: -**
**HON'BLE MR. L.C. BHADOO AND**
**HON'BLE MR. V.K. SHRIVASTAVA, JJ.**

**9-12-2005**

Shri R.K. Jain, counsel for the appellant.

Shri G.K. Beriwal, Additional Public Prosecutor with Shri Ravindra Agarwal, Panel Lawyer for the State/respondent.

Oral Judgment.

By this criminal appeal through the Superintendent, Central Jail, Jagdalpur, accused/appellant Somaru has questioned the legality of judgment of conviction & sentence passed by learned 3rd Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.572/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 6 months.

The prosecution case, in brief, is that on 26.8.1993 PW-1 Budhram gave merg intimations Ex.-P-19 & Ex.P-20 in the Police Station Gadiram to the effect that today at about 10.00 a.m. in the morning his niece namely Mangli (PW-2) came and informed him that Somaru has committed murder of Govind & Sukhdei with an axe. On hearing this, he along with Mangli went to the place of occurrence and saw that the

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body of Govind was lying on the cot and body of Sukhdie was lying on the ground. He immediately called the villagers namely Mangal, Buddhu, Sukhdas, Dhansingh, Chamru, Sahdev, Baldev & Lakhya and apprised them about the incident. A Panchayat was convened in which accused Somaru was also called, who before the Panchayat made the extra-judicial confession regarding committing murder of Govind & Sukhdei. Similar is the merg intimation Ex.P-20. On receiving these merg intimations, F.I.R was reduced in writing and Investigating Officer took up the investigation. During the investigation, Panchnama Ex.P-21 of dead body of Govind was prepared and Panchnama Ex.P-22 of dead body of Sukhdei was prepared. The dead bodies of Govind & Sukhdei were sent for postmortem examination to the Primary Health Centre, Gadiram, where Dr. Akhileshwar Uraon (PW-6) conducted the postmortem on the body of Sukhdie and prepared the postmortem report Ex.P-11. He also conducted the postmortem on the body of deceased Govind and prepared the postmortem report Ex.P-12. The Investigating Officer prepared the site plan of place of occurrence under Ex.P-10. During the investigation the accused/appellant gave memorandum Ex.P-2 regarding the place where the weapon of offence i.e. axe was kept and in pursuance of that, the axe was taken into possession under Ex.P-3. The Investigating Officer also took into possession the blood stained soil and plain soil from the respective

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places of occurrence under Ex.P-4 & Ex.P-5. Clothes of accused/appellant stained with blood were also taken into possession under Ex.P-6. The cot on which Govind was sitting at the time of crime was taken into possession under Ex.P-7, one blanket (Kambal) was taken into possession under Ex.P-8 and broken pieces of bangles were taken into possession under Ex.P-9. Recovered articles were sent for examination to Forensic Science Laboratory, Raipur under Ex.P-25 and the FSL report is Ex.P-26.

After completion of investigation, the charge sheet was filed against the accused/appellant herein for commission of two murders in the Court of learned Judicial Magistrate 1st Class, Sukma, who in turn committed the case to learned Sessions Judge, Bastar at Jagdalpur from where learned 3rd Additional Sessions Judge, Bastar at Jagdalpur received the case for trial.

The prosecution in order to prove the charge against the accused/appellant examined 07 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime on account of land dispute between him and deceased persons.

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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After hearing the arguments of counsel for the accused/appellant & Additional Public Prosecutor, learned Additional Sessions Judge convicted and sentenced the accused/appellant in the manner as mentioned in Para-1 of this judgment.

We have heard Shri R.K. Jain, learned counsel for the accused/appellant and Shri G.K. Beriwal, Additional Public Prosecutor with Shri Ravindra Agarwal, Panel Lawyer for the State/respondent.

The fact of death of Govind & Sukhdei as homicidal in nature has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of eyewitness namely Mangli (PW-2 ) and evidence of Dr. Akhileshwar Uraon (PW-6), who conducted the postmortem on the bodies of Govind & Sukhdei, has stated that the death of Sukhdei & Govind were caused due to shock & hemorrhage and the nature of death was homicidal. Therefore, in view of the above evidence, it is established that the nature of death of Govind & Sukhdei was homicidal in nature.

Now coming to the involvement of the accused in committing the crime in question. There is only one eyewitness to the incident namely Mangli (PW-2). Learned counsel for the accused/appellant argued that in the cross-examination this witness has stated that she saw the dead bodies of Govind & Sukhdei in the Govind's house when she went to house of Govind in the second day morning for taking animals for the

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purpose of grazing. Therefore, as per his argument crime was not witnessed by this witness. Further argument of learned counsel for the accused/appellant was that without the Court's permission the prosecution was allowed to re-examine the witness. He also argued that so far as the evidence of PW-4 Mangal is concerned, PW-2 Mangli has clearly stated in her evidence that she had not disclosed the fact of witnessing the crime to Mangal in the night, therefore, no reliance can be placed on the evidence of Mangal (PW-4). The evidence of Mangal (PW-4) & Budhram (PW-1) is hearsay evidence, therefore, no value can be given to their evidence.

On the other hand, learned Additional Public Prosecutor supported the judgment of trial Court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant, we have perused the evidence of PW-2 Mangli after placing reliance on whose evidence the trial court has convicted the accused/appellant herein. PW-2 Mangli in Para-2 of her examination in chief has clearly stated that she was grazing the cow near the house of her grandfather and she witnessed that accused Somaru attacked Govind with the axe on his neck and second time also he attacked with the axe, as a result of which Govind received injuries on his forehead and blood started oozing out of it. At that time, Sukhdei was preparing tea and when she asked the accused/appellant as

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to why he has assaulted Govind, upon which accused attacked Sukhdei also on her head with the same axe. Govind & Sukhdei died on account injuries received by them in the said attack. When she asked the accused that why he has attacked them, the accused ran after her, therefore, she entered the house of Mangal (PW-4), who is her brother-in-law. The incident was of the evening, she did not disclose this fact in the evening to anyone and on the second day morning, she disclosed this fact to her grandfather Budhram (PW-1), but in the house of Mangal (PW-4) she did not disclose this fact to anyone. On the cross-examination by learned counsel for the accused, in Para-3 of her evidence she has stated that it is correct that when second day she went to the house of Govind to take the cattle for grazing and when she entered the house of Govind she saw the dead bodies of Govind & Sukhdei and thereafter, she went to the house of Budhram and disclosed the same fact to him. When a question to clarify the position about her evidence made in Para 1 & 3 was put to her that which one is correct out of two, then she replied that the fact that she witnessed the assault on Govind & Sukhdei by accused Somaru with the axe is correct. On cross-examination she has stated that it is correct that she brought the cow and bullock and tied them in the room and thereafter, she went to the house of Mangal and she remained there whole night.

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In order to appreciate the evidence of PW-2 Mangli, we have to examine it with the help of surrounding circumstances. Budhram (PW-1) has corroborated the evidence of this witness to the extent that Mangli came and informed him about the death caused by the accused/appellant of Govind & Sukhdei and upon which he informed the other villagers, went to the place of occurrence and saw the bodies. Thereafter, a panchayat meeting was convened in the village , accused Somaru was also summoned and where the accused made a extra-judicial confession. . Even based on the information given by accused Somaru under Ex.P-2, the weapon of offence i.e. axe was recovered under Ex.P-3. Recovery memo of axe shows that the axe was stained with blood and even the clothes of the accused, which were taken into possession, were also stained with blood. Moreover, PW-4 Mangal has stated in his evidence that Mangli (PW-2) disclosed him the fact of attack by accused on Govind & Sukhdei. Dr. Akhileshwar Uraon (PW-6) has stated that he examined deceased Sukhdei and found a cut injury on the above left ear in the size of 8"x4"x0.5" and parietal bone was found fractured. He has also stated that he conducted the postmortem on the body of deceased Govind also and found that there were cut injuries on the head of Govind.

If all these factors i.e. evidence of PW-1 Budhram to the effect that PW-2Mangli informed him about the incident, he went to the place

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of occurrence along with few villagers and saw the dead bodies of Govind & Sukhdei; recovery of axe i.e. weapon of offence at the instance of accused Somaru, which was, as per FSL report Ex.P-26, found stained with blood, corroborates the evidence of PW-2 Mangli and with the help of above materials on record, it is safe to place reliance on the evidence of PW-2 Mangli, who is an illiterate girl of 14 years of age from the backward area and the minor discrepancies in her cross-examination are bound to occur. But when she was asked to explain that which part of her statement is correct i.e. regarding witnessing the crime or Para-3 of the cross-examination in which she has stated that on the next day morning when she went to the house of Govind she saw the dead bodies of Govind & Sukhdei, then she explained that the fact that she witnessed the crime is correct. Nothing wrong appears to be in the procedure adopted by the trial court, when there was ambiguity between the two portion of particular statement it was the duty of trial court to get it clarified from the witness in order to ascertain the correctness of the statement. Moreover, at the time of recording the evidence of this witness, no objection was raised by the counsel for the accused.

Now coming to the fact that Mangali has stated that she did not disclose to Mangal about witnessing the crime. As has been mentioned above that PW-2 was an illiterate girl 14 years of age from the

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backward side, therefore, her evidence has to be evaluated with care and if we look into the evidence of PW-4 Mangal, who has stated that Mangli disclosed him about the fact that Samaru had assaulted Govind & Sukhdei by an axe, upon which he went to the house of Govind where he saw the dead bodies. As such, the evidence of Mangal also corroborates the witnessing of crime by Mangli.

Now coming to question about the extra-judicial confession made by the accused/appellant herein before the Panchayat. Learned counsel for the accused/appellant while drawing attention of the Court towards the last lines of Para-5 of the cross-examination of PW-1- Budhram, argued that from these words it cannot be held that the voluntary confession was made by the accused/appellant, as this witness in Para-5 of the cross-examination has stated that when the Sarpanch, Kotwar & Patel asked the accused/appellant that on account of land dispute you have murdered Govind & Sukhdei, then accused Somaru replied that when the Panchayat is putting such a question, then they can lodge the report against him.

In order to accept the extra-judicial confession the Court is required to ascertain that as to whether the extra-judicial confession was voluntary and true and inspire the confidence of the Court. When it is difficult to reach to a definite conclusion then such extra-judicial confession can be relied upon only after corroboration with other

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material evidence in material particulars. If we look into the evidence of PW-1 Budhram, he has stated that on seeing the dead bodies of Govind & Sukhdei he informed the Sarpanch, Patel & Kotwar of the village about the incident. Thereafter, a panchayat was convened in which the accused/appellant was also called and before the Panchayat the accused disclosed that as there was a dispute regarding land with Govind, therefore, he has committed his murder. In Para-5 of cross-examination this witness has denied that any pressure was put on the accused, however, it is true that Kotwar stated that there is every chance that accused Somaru may run away, therefore, he may be tied and thereafter, they had tied the accused/appellant with the help of rope. Thereafter, Sarpanch, Patel & Kotwar put the questions to the accused for about 1 to 1½ hrs. It is incorrect to say that at times accused used to confess that he has committed the murder and at time he used to say that he has not committed the murder. In para-6 this witness has stated that it is correct to say that on account of land dispute accused was not talking with Govind & Sukhdei.

If we examine the above evidence of this witness regarding making extra-judicial confession before the Panchayat by accused/appellant with the help of other evidence i.e. the blood stained axe the weapon of offence was recovered at the instance of accused/appellant, blood stained clothes of the accused/appellant was

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taken into possession and same were sent to the FSL, Raipur from where report Ex.P-26 was sent according to which blood was present on these articles coupled with the evidence of PW-2, who witnesses the crime, establishes the fact that the accused/appellant made the extra-judicial confession regarding commission of crime by him before the Panchayat in presence of PW-1 Budhram. From the above material, the fact of extra judicial confession made by the accused stands corroborated. It has not come in the evidence of PW-1 that any threat or coercion was made on the accused to make the extra-judicial confession and it is also established that there was land dispute between the accused and the deceased persons and that was the motive to commit the heinous crime which also land support to the fact that the accused made the extra-judicial confession and the crime was committed by him.

In view of the foregoing discussion, we are of the considered opinion that in view of the evidence of PW-2 Mangli, extra-judicial confession made by accused Somaru before the Panchayat in presence of PW-1 Budhram, recovery of weapon of offence i.e. axe at the instance of accused/appellant and recovery of clothes of accused/appellant stained with blood establishes the fact that the accused was the author of the crime, therefore, we do not find any ground to interfere with the finding of the trial court and the

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| | conviction & sentence awarded to the accused/appellant deserves to be sustained.<br><br>In the result, the appeal of the accused/appellant is devoid of merit, same is liable to be dismissed and it is hereby dismissed.<br><br>**Sd/-**<br>**L.C. Bhadoo**<br>**Judge** | **Sd/-**<br>**V.K. Shrivatava**<br>**Judge** |

Roshan/-

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